



Joint Committee of the Senate and the House of Commons

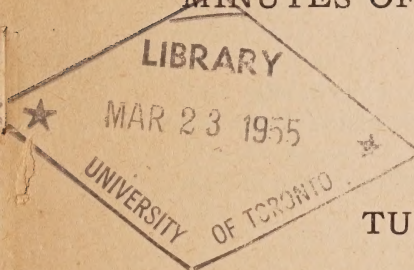
ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and
Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No 6.



TUESDAY, MARCH 8, 1955

WITNESSES

Representing The John Howard Society of Quebec: Professor William A Westley, Sociology Department, McGill University; Dr. Alastair W. MacLeod, Professor of Psychiatry, McGill University; and Mrs. Kathleen Campbell, Executive Director of the Society.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 8, 1955.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m., Mr. Don. F. Brown, Joint Chairman, presided.

Present:

The Senate: The Honourable Senators Aseltine, Farris, Fergusson, Hodges, McDonald, Tremblay, and Veniot—(7).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Johnston (*Bow River*), Leduc (*Verdun*), Lusby, Mitchell (*London*), Montgomery, Shipley (Mrs.), Valois, and Winch—(14).

In attendance:

Representing The John Howard Society of Quebec: Professor William A. Westley, Sociology Department, McGill University; Dr. Alastair W. MacLeod, Professor of Psychiatry, McGill University; and Mrs. Kathleen Campbell, Executive Director of the Society.

Counsel to the Committee: Mr. D. G. Blair.

On motion of the Honourable Senator McDonald, seconded by the Honourable Senator Hodges, the Honourable Senator Farris was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.


The delegates were called and were introduced by Counsel to the Committee. Professor Westley presented and read the Society's brief on abolition of capital and corporal punishment (copies of which were distributed in advance) and, along with the other delegates, was questioned thereon.

The presiding chairman expressed the Committee's appreciation to the witnesses for the presentations made on behalf of their society.

The witnesses retired.

At 1.15 p.m., the Committee adjourned to meet again as scheduled.

A Small,
Clerk of the Committee.



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EVIDENCE

TUESDAY, March 8, 1955.

11:00 A.M.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): Will you come to order, please, ladies and gentlemen.

A motion will now be entertained by the chair to nominate a co-chairman representing the Senate for the day.

Hon. Mr. McDONALD: May I suggest Senator Farris, Mr. Chairman?

The PRESIDING CHAIRMAN: Senator Farris has been suggested, supported by Hon. Mrs. Hodges. All in favour?

Carried.

Will Senator Farris please come forward.

Tomorrow, ladies and gentlemen, there will be a meeting at 4:00 p.m. in room 277, the House of Commons railway committee room. We will have as our witness Mr. J. A. Edmison, Q.C. of Queen's University who will speak on capital and corporal punishment. There will be some interesting features to his presentation.

Hon. Mr. FARRIS: What time did you say?

The PRESIDING CHAIRMAN: Tomorrow at 4:00 p.m.

I shall now ask Mr. Blair to introduce the witnesses today, who are representing the Quebec John Howard Society.

Mr. BLAIR: Mr. Chairman, ladies and gentlemen: the John Howard Society of Quebec, whose headquarters are in Montreal is represented today by Professor W. Westley, of the sociology department of McGill University; by a gentleman who is a friend of ours from last year, Dr. Alastair MacLeod, Professor of Psychiatry, McGill University; and also by Mrs. Kathleen Campbell, executive director of the John Howard Society of Quebec. Professor Westley will speak to the brief.

Professor W. Westley, Department of Sociology, McGill University, called:

The WITNESS: Mr. Chairman, and ladies and gentlemen: do you want me to read the brief?

The PRESIDING CHAIRMAN: What is your pleasure; it may be that some members of the committee have not had an opportunity of studying it yet as carefully as they would like to.

Hon. Mrs. HODGES: May I suggest, Mr. Chairman, that the witness read his brief except for the statistical tables which we already have in our evidence.

The PRESIDING CHAIRMAN: Is that in order?

Agreed.

THE WITNESS:

Introduction

Death, torture, mutilation, and flogging were, in past centuries, common forms of punishment for all sorts of crimes ranging from theft to homicide. Today, however, most of these punishments have disappeared in the civilized nations of the western world. Only death and flogging yet remain, and these

punishments are used only rarely, for the most severe crimes, in a limited number of nations. Where they yet exist one finds public discussion as to their desirability.

Canada, like England, has in recent years been in a process of reconsidering its policy with respect to the utility and moral desirability of these forms of punishment. Both learned opinion and scientific evidence has been brought to bear on this discussion.

The John Howard Society of Quebec, whose long experience with the prison and post-prison lives of criminals qualifies it to speak on this subject, has made an intensive study of scientific evidence bearing on the problem of capital punishment and flogging. As a result, we feel it necessary to state that these forms of punishment are neither useful nor morally desirable, and recommend to the joint committee of the Senate and the House of Commons that both be abolished. Our recommendations are based upon the following evidence:

The Death Penalty

Three major points must be made against the use of the death penalty:

(1) It is not a more effective deterrent to murder than life imprisonment.

(2) There is no satisfactory evidence that it protects the public or the police by preventing criminals from carrying lethal weapons.

(3) It tends to introduce an emotional element in the function of the jury and it is by nature irreversible in the event of a miscarriage of justice.

We would like to deal with each of these points in order and then to consider the advantages of substituting life imprisonment for capital punishment.

Capital Punishment as a Deterrent to Murder

Considerable evidence in this point has been presented to this committee and to the Royal Commission on Capital Punishment (Brit.) by Prof. Thorsten Sellin. It would serve no useful purpose to repeat all of this evidence here. However, certain major points do deserve reiteration. Thus Prof. Sellin describes three types of statistical evidence related to the deterrent effects of the death penalty. They are as follows:

(1) Comparison of Abolition and Non-Abolition Areas

If the death penalty exercises a deterrent effect on prospective murders, then murders should be less frequent in areas that have the death penalty than in those that have abolished it, other factors being equal. The most useful comparison of the incidence of murder in abolition and non-abolition is that made between areas which are geographically contiguous and similar in socio-economic and cultural characteristics. These conditions are met in certain of the states in the U.S.A. Thus, comparisons of Maine (an abolition state) with Vermont and New Hampshire (non-abolition states), of Rhode Island (an abolition state) with Massachusetts and Connecticut (non-abolition states) and of Michigan (an abolition state) with Indiana and Ohio (non-abolition states) clearly indicate that there is no perceptible difference in the incidence of murder. To quote Prof. Sellin "within each group of states . . . it is impossible to distinguish the abolition states from the others. The trends of the homicide rates with or without the death penalty are similar. The inevitable conclusion is that executions have no discernible effect on homicidal rates."¹ Table one which follows presents the statistics. The abolition states have been capitalized.

¹Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries, Minutes of Proceedings and Evidence, No. 17, the Queen's Printer, Ottawa, 1954, p. 727.

TABLE 1

Homicide Death Rates, per 100,000 population (1920-48)
in Selected American States

Year	Maine	N. Hamp.	Vermont	Mass.	R.I.	Conn.	Mich.	Ohio	Indiana
1920	1.4	2.8	2.3	2.1	1.8	3.9	5.5	6.9	4.7
1921	2.2	2.2	1.7	2.8	3.1	2.9	4.7	7.9	6.4
1922	1.7	1.6	1.1	2.6	2.2	2.9	4.3	7.3	5.7
1923	1.7	2.7	1.4	2.8	3.5	3.1	6.1	7.8	6.1
1924	1.5	1.5	.6	2.7	2.0	3.5	7.1	6.9	7.3
1925	2.2	1.3	.6	2.7	1.8	3.7	7.4	8.1	6.6
1926	1.1	2.9	2.2	2.0	3.2	2.9	10.4	8.6	5.8
1927	1.9	.7	.8	2.1	2.7	2.3	8.2	8.6	6.3
1928	1.6	1.3	1.4	1.9	2.7	2.7	7.0	8.2	7.0
1929	1.0	1.5	1.4	1.7	2.3	2.6	8.2	8.3	7.0
1930	1.8	.9	1.4	1.8	2.0	3.2	6.7	9.3	6.4
1931	1.4	2.1	1.1	2.0	2.2	2.7	6.2	9.0	6.5
1932	2.0	.2	1.1	2.1	1.6	2.9	5.7	8.1	6.7
1933	3.3	2.7	1.6	2.5	1.9	1.8	5.1	8.2	5.6
1934	1.1	1.4	1.9	2.2	1.8	2.4	4.2	7.7	7.1
1935	1.4	1.0	.3	1.8	1.6	.9	4.2	7.1	4.4
1936	2.2	1.0	2.1	1.6	1.2	2.7	4.0	6.6	5.2
1937	1.4	1.8	1.8	1.9	2.3	2.0	4.6	5.7	4.7
1938	1.5	2.8	1.3	1.3	1.2	2.1	3.4	5.1	4.4
1939	1.2	2.3	.8	1.4	1.6	1.3	3.1	4.8	3.8

Statistical comparisons of abolition and non-abolition nations support these figures.

(2) Comparison of Abolition and Non-Abolition Periods in Same Countries

If the death penalty is a deterrent to murder, then murders should increase when the death penalty is abolished and decrease when it is restored.

Information is available from many states in the U.S.A. and from various nations where the death penalty has been first abolished and later restored. A statistical comparison of the incidence of murder in both these periods shows that there is no relationship between the incidence of murder and the abolition or restoration of capital punishment. The cases of Iowa and Colorado are illustrative:

In Iowa, where capital punishment was abolished in 1872 and restored in 1878 "During the abolition period there was an annual average of 8.8 murder convictions and 5.9 convictions for manslaughter. The corresponding figures for the seven years previous to abolition were 2.6 and 3.4 and for three seven-year periods after restoration of the death penalty they were 13.1 and 5.6."³ Clearly homicide in Iowa was increasing independently of the punishment in vogue.

In Colorado where capital punishment was abolished in 1897 and restored in 1901 "During the five years before abolition, the annual average for murder was 15.4 and manslaughter 2.6, during abolition the corresponding figures were respectively 18 and 4, and for the five years following reintroduction of the death penalty 19 and 5."⁴ A trend similar to Iowa is here to be observed.

Other data are available for Washington, Oregon, South Dakota, Tennessee, Arizona, Missouri, and for New Zealand and Queensland.⁵

³Royal Commission on Capital Punishment 1949-53, Report, Her Majesty's Stationery Office, London, 1953, pp. 350-351.

⁴Royal Commission on Capital Punishment, op. cit. p. 346

⁵Ibid, p. 347

⁶Ibid, p. 342-349

In each case the number of murders seems to follow a trend which is independent of the existence of the death penalty.

(3) Comparison of the Number of Murders Preceding and Following Executions

If the death penalty exercises a deterrent effect on prospective murders then the murder rate should drop in periods immediately following well-publicized executions. The only data which tests this thesis are drawn from a study made in Philadelphia, where the number of murders was compiled for the sixty days preceding and the sixty days following each of five well-publicized executions. The results have been summarized by Prof. Sellin. "During the 300 days prior to the executions there were 115 days without homicides while during the 300 days after the executions there were only 74 such days. There were a total of 91 homicides before and 113 after the executions."⁶

Results

Each comparison substantiates the view that the death penalty in comparison with life imprisonment does not exercise a perceptible deterrent effect on prospective murders. No differences in the murder rate can be found either between abolition and non-abolition states, or between abolition and non-abolition periods in the same state. Furthermore, the periods following well-publicized executions show no significant drop in the incidence of murder. In fact, in the limited study available to us, periods following executions show an actual increase in the number of murders which seem to support a view that executions may actually incite people to murder rather than deterring them from it.

Protection of the Police

Our second major point concerns the alleged function of the death penalty in preventing criminals from carrying or using lethal weapons. Proponents of the death penalty thus maintain that it protects the police and public in deterring criminals from using violence.

There is little statistical evidence with which to test this thesis, but certain points can be made in refutation. Thus, the argument ignores:

- (1) The increased risks of detection attendant upon the illegal possession of weapons by criminals.
- (2) The increased penalties attached to various crimes when they are accompanied by firearms.
- (3) The possibility of achieving this protection through means other, and possibly more directly effective, than capital punishment. We refer to great increases in the penalties attached to the illegal possession of firearms, and to crime by armed criminals.

The John Howard Society, therefore, also recommends that the possibility of stiffening the penalties for the illegal possession of firearms, and for armed crimes, be looked into.

Miscarriage of Justice

Finally, we wish to point out that the use of the death penalty may promote the miscarriage of justice in two ways: (a) through the execution of the innocent, and (b) through the release of the guilty.

- (a) Though the greatest of care is taken to protect the innocent, justice can never be infallible. Yet, when a person has been executed no correction of injustice is possible. Though only a few cases of this kind have been identified, it stands to reason that to discover such cases should be exceedingly difficult. In contrast to persons sentenced to life imprisonment, there is little chance that persons who have been

⁶The Joint Committee of the Senate and the House of Commons, *op. cit.* p. 728

executed will eventually be proved innocent. Unlike the "lifer" they obviously cannot struggle to prove their own innocence. Unlike the "lifer" there is very little chance that public spirited citizens or friends will continue to work in their behalf. When a man has been executed, his "cause" is generally at an end and he tends to be forgotten. When a man has been sentenced to life imprisonment, any doubts about his guilt remain on the public conscience, and, in addition, his case is always subject to review. Without such incentives, it is highly unlikely that errors in justice will come to our attention. Thus, it seems reasonable that the statistics with respect to the number of innocent persons who have been executed are highly questionable.

- (b) Probably because of the reasons given above, juries are notoriously loath to convict a person where the penalty is death. Therefore, as any public prosecutor can probably testify, they allow many guilty men go free. Had these men been up for a lesser sentence, it is also frequently agreed, they would have been easily convicted. It is common practice for the public prosecutor to arraign a man on a lesser charge for these very reasons. The practice was even more apparent in the 18th century when juries refused to convict because the death penalty was mandatory for many minor crimes from pickpocketing to poaching. While Canada has had a high record of commutation of death sentences, it is a nice question whether the humanity of the administrator is a better guide than an absolute rule of law.

The substitution of the sentence to life imprisonment for the death penalty should alleviate both these conditions.

Alternatives

The major, and only suitable alternative to capital punishment is life imprisonment. This is the policy which has been adopted by the many countries where capital punishment has been abolished. Among such countries are: Columbia, Puerto Rico, Costa Rica, the Dominican Republic, Finland, Italy, Austria, Belgium, Western Germany, Denmark, Switzerland, Sweden, Norway, the Netherlands, and many states in the United States. In general, the experience of these countries indicates that life imprisonment is just as effective, as easily administered, and a more humane and just method of penalizing murder, than capital punishment. Thus:

- (a) The statistics cited with respect to the deterrent effects of capital punishment clearly support, in every instance, the relative effectiveness of life imprisonment.
- (b) The statement of prison wardens indicates that murderers are generally model prisoners.
- (c) Evidence from areas where murderers have had part of their sentence reprieved indicates that there is little recidivism, particularly with respect to murder.

Thus, Prof. Sellin cites figures obtained from a survey of England and Wales, Scotland, Ireland, New Jersey, Pennsylvania, Belgium, Northern Ireland, Finland, Norway and Switzerland; which involve a total of 384 reprieved murders. Of this number, only twenty-seven were subsequently convicted of any kind of offence (including breaking parole) and *only one* committed another murder.⁷

Summary

This brief survey of the data relating to the effectiveness of capital punishment as a specific deterrent to murder clearly supports the contention that it

⁷The Joint Committee of the Senate and the House of Commons, op. cit, p. 735.

is no more effective than life imprisonment. In addition, it has been pointed out that there are no statistical grounds for assuming that capital punishment prevents criminals from carrying firearms, or that it represents the most effective means for achieving this purpose. Furthermore, it is clear that capital punishment is more susceptible to promoting a miscarriage of justice than life imprisonment.

We would maintain that life imprisonment offers just as effective, and, in fact, a superior means for penalizing the crime of murder, that it is less susceptible to promoting a miscarriage of justice, and that it is more humane and in line with the legal and peneological trends of our culture.

Flogging

Like the death penalty, flogging is accepted as a legal punishment in only a limited number of western nations and they use it rarely. In modern times the tendency towards its abolition has been marked⁸. While the scientific evidence is limited, what there is clearly suggests that flogging is useless as a deterrent. Morally, it is inexcusable in a society which condemns violence.

Two studies have come to our attention which bear on the deterrent effects of flogging. The first made by Prof R. G. Caldwell, of the University of Delaware, concerns the effects of flogging on the individual prisoner. The second, by Mr. E. Lewis-Faning of the statistical staff of the British Medical Research Council, concerns the effect on the general population.

Prof. Caldwell's study of 320 cases of prisoners who had been flogged in the state of Delaware (the only state in the U.S.A. which uses flogging as a legal penalty) presents the following conclusions:

The whipping of criminals did not effectively deter them from again committing a crime. Not only were many such persons (61·9%) after their first whipping convicted of crimes, but a large number of them (48·8%) were found guilty of major offences. Moreover, a high percentage (41·9%) were convicted of crimes for which the laws of Delaware prescribed the penalty of whipping, and many (30·9%) were found guilty of having committed such crimes in Delaware, and not in some neighbouring state.

The subjection of criminals to more than one whipping was not effective in changing their criminal habits. After having received at least two whippings, many (65·3%) were again convicted of some crime, and a large percentage (57·1%) were found guilty of major crimes⁹.

Mr. Lewis-Faning's study concerned the relationship between the incidence of robbery with violence and the numerous floggings administered as punishment in England and Wales during the years 1864-1936. His conclusions were as follows:

During the period 1864-1936 there is not evidence that the infliction of corporal punishment has in any way acted as a deterrent to prevent others from committing (robbery with violence). Rather, does it appear that there is no relation at all between the number of floggings and the amount of crime in the same year—or in the subsequent year.

... Far from being imposed for its deterrent element, which it has never possessed in reality, and to a greater degree than ever before the war, it is being imposed as a retributive¹⁰.

Both of these studies indicate quite clearly for the areas in question—Delaware in the first instance, and England and Wales in the second—that flogging is ineffectual as a deterrent either to the criminal in question or to

⁸The Joint Committee of the Senate and the House of Commons, *op. cit.*, p. 713

⁹*Ibid.*, p. 709

¹⁰*Ibid.*, p. 713

potential criminals in the general population. These results do not automatically hold true for Canada. However, in the absence of evidence to the contrary, it may be assumed that they have relevance for this country.

The uselessness of flogging as a deterrent, and its obvious moral undesirability, both compel a recommendation that flogging be abolished as a legal punishment in Canada.

The PRESIDING CHAIRMAN: Are there any other comments which you would care to make, Professor Westley on the brief you have presented?

The WITNESS: I would like to make one point which I think is rather important in connection with this brief, and with the committee's general inspection of the statistics on capital punishment. Most people in our society, recognize that statistics can be conjured to prove almost anything, and will upon having statistical evidence presented to them call attention to this fact. But in the case of statistics on the abolition of capital punishment, one obvious fact sticks out, that is that the people who are in favour of retaining capital punishment have been completely unable to find any statistics to support their opinion. I think this is a tremendously significant point. If the statistics can be manipulated why have not the people who favour maintaining capital punishment found such statistics and shown them to exist? In my reading of the literature on this question I have been unable to discover any such statistics.

The second point I would like to make refers to another argument—a very real one in some ways—in favour of retaining capital punishment, which comes from people closely concerned with the immediate problem of confronting armed criminals, particularly the police. Anyone who has had any close contact with the police realizes the importance of this problem to them in their daily lives.

Well, it has been my experience that policemen are usually most afraid of young criminals, the adolescent and late adolescent boy, who, they claim they are afraid of because such youths just do not know anything; they are completely unaware of the law, their actions are unpredictable, and they are liable to shoot if, perhaps they are cornered and asked simply to "go along." It seems to me that it is from boys of this type that the threat to the police comes, and not from experienced criminals, or so-called professional criminals. The latter class is becoming exceptionally rare in our society, but from what I know of their cases, they are very careful about what they do in terms of being caught, identified and so on, and I would think that strong measures to prevent them carrying fire arms would certainly lessen the employment of them.

On the other hand I do not think the death penalty as a deterrent is going to have much of a deterrent effect on the younger element among our criminals because they do not pay much attention to the law anyway, or against persons who have psychological tendencies to commit murder. So that in addition to the materials in this brief, I want to make these two points in support: the first is the complete lack of statistical evidence supporting the other side of the question. I think this is very significant and makes the statistics supporting the abolition of capital punishment for murder more telling than they would be otherwise; and the second point is that I do not see any evidence which supports the general opinion on the part of policemen that capital punishment does in fact protect them.

The PRESIDING CHAIRMAN: Mrs. Campbell, have you anything you would like to add to this?

Mrs. CAMPBELL: No, I don't think so. I think that this brief is very clear. As a social worker, I and my associates have naturally known people who have been hanged, and two of the cases, which I know personally, involved men who had been known to family agencies over a long period. I am thinking of

two men I have known during my three years with the John Howard Society. They were of very low I.Q. who were quite incapable of thinking ahead as to the effect of any act of theirs, and therefore the threat of capital punishment could not have been any deterrent to them.

The other man I am thinking of did not come into that category, but he had a history of illegitimacy. To put it briefly, he had been married for seven years without children; his wife was pregnant, and not by him. He hit her and killed her. If you know the stories behind these people you realize that the fear of punishment is going to have absolutely no effect upon their actions.

The PRESIDING CHAIRMAN: Dr. MacLeod, have you anything you would like to add?

Dr. MACLEOD: Just one point I would like to make in illustration of a point which Professor Westley has touched on. We felt, as he has intimated, that there was one weakness in our presentation—a suitable answer to the criticism that if you removed the death penalty the police would be exposed to risk of greater injury. I feel that in many of these cases—for example I am thinking of the situation in England during the period of the temporary abolition of the death penalty while the decision of the House of Lords was being reached on the bill which had already been passed in the House of Commons—during that time a policeman was killed—

The PRESIDING CHAIRMAN: Do you think you could speak more slowly, Dr. MacLeod?

Dr. MACLEOD: The point I was trying to make is this, that we must realize that a psychologically disturbed person or a young person without much foresight and judgment, finding himself cornered might not hesitate to use a gun, yet such an individual often sobers up immediately after the act. He realizes then what he has done. He realizes, of course, that his own life is likely to be forfeit.

If we could make some arrangement—and we put this forward as a tentative suggestion for discussion—whereby a criminal who had committed a murder should be subject to some process of law under which the death penalty was not mandatory if he gave himself up immediately, and under which the death sentence would be mandatory only if he injured an officer of the law, or a citizen engaged in apprehending him after he had committed the murder, we feel in these conditions it might be possible that a number of people who had committed a murder and then sobered up might be motivated to surrender themselves to the law, knowing that at the very worst they would only get life imprisonment. Thus an individual would not, so to speak, be a criminal on the run with nothing to lose if he were to fire at any policeman later involved in apprehending him.

This possibility that if we advocate the abolition of the death penalty we might create a situation of danger for the police has worried us.

Mr. BLAIR: Pardon me, Mr. Chairman, but before the witness was interrupted he was going to say something about the position in England—

Dr. MACLEOD: I was referring to the situation there when the House of Commons had suspended the death sentence and while their decision was awaiting confirmation by the House of Lords. The death penalty during that time, was abolished, and I think you will recall a young policeman was shot in the thigh and bled to death during his attempt to apprehend a criminal. I think this was one of the factors which seemed to influence the public mind in favour of having the House of Lords revoke the action of the House of Commons.

The PRESIDING CHAIRMAN: And now, ladies and gentlemen, have you any questions you would like to submit to any of the three witnesses? I think

we shall carry on with the practice we have adopted before, that is to say we shall go round the table, and I think this time we should start on the right. Probably Senator Farris will kindly lead off.

Hon. Mr. FARRIS: This one question perplexes me a little. Listening to your evidence, and that of others, we did not hear very much about justice. I am thinking of a case which happened about a year ago. A man and a woman had grabbed this little child, claimed an indemnity, I think they got it, and then murdered the child. I feel the factor of justice, aside from prevention, entered into these cases.

The WITNESS: I would only comment that as a scientist I cannot speak on the factor of justice. If I had opinions on that, I would certainly reserve them. I can only tell you about these cases in so far as you are interested in the deterrent effects of various forms of punishment. There is some evidence on this, and I can speak on it. Justice itself has varied tremendously over the years, and from country to country. This has to be, but I do not think my own opinion is particularly worth while, and I would not want to express it as a scientist.

The PRESIDING CHAIRMAN: You mean that our concept of justice in Canada may be entirely different, to what it would be in some Asiatic or even European country?

Hon. Mr. FARRIS: We have to test it upon our consciousness in our own country.

The WITNESS: This you have to do, but I should not. I tried to give evidence where I could, I cannot do so with respect to moral evaluations such as those involving justice. But you asked whether the death penalty is a deterrent, and I can speak on that point with some evidence.

Mr. VALOIS: I am afraid my English will not be good enough to enable me to say what I have in mind. One thing interested me, however. You seem to put a lot of faith in statistics, and yet you say that those who claim that the death penalty is a deterrent cannot find any statistical evidence, and your conclusion is that because there are no such statistics probably these people are, in a way, "on the spot" in making their claim good. But do you think it would be at all possible, for instance, to figure out how many people may have refrained from committing murder? How is it possible that these facts should come to be known?

The WITNESS: I see your point. What I was referring to is a very wise suspicion of statistics. I was trying to say that you could choose figures to suit different purposes. These very same figures that I am presenting now, a similar table such as this showing, for example, that there was a higher rate or incidence of murder in abolition areas would prove the contention of the supporter of capital punishment. Figures showing that murder did actually rise during abolition periods would support the view that capital punishment was a deterrent from murder. In other words, the possibility of the figures is very definitely there, within the range of available statistical evidence, but the total absence of the use of such figures indicates to me that they just cannot be set up. It is my belief that in the contentions of public life, parties having various concerns will do their best to support their various points of view, and in this case I feel very strongly that the fact that they have not presented a statistical argument supporting the maintenance of capital punishment is significant.

The statistics only refer to the deterrent effect. They cannot involve questions like justice.

To answer the point raised by Mr. Valois, where statistics exist, they can be used by any interested party. You asked me specifically how can you have

statistics showing that capital punishment was a deterrent. I refer you to the statistics I have given. They would have turned out differently, had this been the case.

Mr. VALOIS: Will you not agree that at certain periods in certain countries you will find more murders taking place than is usual? Let us forget about the death penalty for a moment. What is happening is what is called a crime wave. It does not happen to function with the penalty provided by the law. It may find its explanation, for instance, in an economic crisis or because of the uncertainties of a post-war period, or other psychological conditions, and that is why I think the figures which have been presented to us are inconclusive—because even after the death penalty has been abolished in a certain state, one may happen to find there conditions, economic or otherwise, which have brought on a crime wave. In my opinion whether the death penalty has been abolished or not is not conclusive.

The PRESIDING CHAIRMAN: I think your question is very good. But I think it was answered by Professor Sellin and also by Professor Westley here, namely that statistics do not support either one side or the other. As you say there are usually emotional reasons, or reasons connected with the economic situation, or some local condition. That is all you are trying to bring up, as I understand it, is that not correct?

Mr. VALOIS: I understand that the statistics which are brought before us are to show that the death penalty would not have much of a deterrent effect.

The PRESIDING CHAIRMAN: As I understand it, Professor Westley was trying to show that the statistics do not prove anything.

The WITNESS: I certainly would not agree. I am not saying that they do not prove anything. I am saying you would normally be suspicious of statistics because they could be used to prove different things.

The PRESIDING CHAIRMAN: What you are saying is that statistics do not show that we should change capital punishment or abolish it.

The WITNESS: These statistics only show that there seems to be no difference between capital punishment and life imprisonment as a deterrent.

By Mrs. Shipley:

Q. I would like to ask Professor Westley whether the primary purpose of the John Howard Society is not to rehabilitate persons who have served their sentences—to rehabilitate them in a normal life. Is that not the primary purpose of the society?—A. Yes.

Q. I must say, Mr. Chairman, I have been looking forward for some time to hearing from the John Howard Society, and I had hoped, sir, that you would be able to provide us with statistics in relation to Canadian prisoners who have served their sentences, some of whom may have suffered corporal punishment.

I was of the opinion that you could contribute a great deal to this committee in that respect. We have not had this information, and I feel that yours was the society best fitted to do this, but if I may say so, sir, I am not entirely satisfied with the evidence we have had. Can you not give us some statistics of the experience of your society. I am sure it would be most valuable to us.—A. Perhaps I can refer that question to Mrs. Campbell. We certainly would have presented these facts had they been on record.

Q. You do not keep statistics in your society?

Mrs. CAMPBELL: I would like first to explain Professor Westley and Dr. MacLeod are on the board of the John Howard Society. I am a social worker. We have never kept statistics particularly relating to corporal punishment. I can however think of two men who received corporal punishment and who have been known to us in our work.

Mrs. SHIPLEY: Did you have only two?

Mrs. CAMPBELL: I did not say that. It is difficult to recall cases because we have not kept statistics relating just to corporal punishment, but I can briefly tell you about these two cases which are within my own experience, if that would be of interest. One is the case of a young man brought up in the usual rather hopeless setting in which so many of the men who end up in the penitentiaries are brought up. He was sent to a penitentiary. He had been known to social agencies for a long time. The social agencies tried to work with him, and were beginning to "get under his skin", if one can put it that way. He then took part in a prison escape which I think members of the committee know about and was flogged for his part in the escape. Since that date we have not been able to "get through" to him at all. He is soon going to be released and I think the possibility of his rehabilitation is not very good.

The other case concerns a person between 20 and 30 who was flogged a couple of times. After the floggings he subsequently committed another crime of brutal violence and went back to the penitentiary for that offence. After this last sentence he came to our agency. We got to know him fairly well, and one of the questions we asked him was: "What was the effect of this beating in the prison?" His reaction was that it definitely deterred him from breaking prison rules, but when he committed his crime of violence it was a little more brutal and a little more violent than anything he had committed before.

These are the only two cases which come to my mind at this moment.

Mrs. SHIPLEY: Do you happen to know if the John Howard Society of Ontario would have available any statistics with respect to prisoners giving such information as the effect of severe corporal punishment?

The WITNESS: I do not think so. I was talking to Mr. Kirkpatrick only ten days ago. I don't think they have got this information, but I think it would be an interesting study and I can quite see the value of it. It is extremely difficult from a scientific point of view, however, to evaluate these cases. You have got to make up your mind what rehabilitation is.

The PRESIDING CHAIRMAN: Could we hear something on the background of the John Howard Society?

Mrs. SHIPLEY: If they have not got the statistics that I have been looking forward to and expected to receive, that is, actual evidence on the result of corporal punishment on Canadian prisoners—if we cannot get that I am no longer interested in pursuing this subject.

The PRESIDING CHAIRMAN: How is the John Howard Society maintained?

Mrs. CAMPBELL: There are John Howard Societies right across Canada.

The PRESIDING CHAIRMAN: Is it nationally organized.

Mrs. CAMPBELL: It is not a national organization. There are separate societies in each province.

The PRESIDING CHAIRMAN: How are they organized?

Mrs. CAMPBELL: They are organized locally. We are all members of the Crime Delinquency Division of the Canadian Welfare Council and the Canadian Penal Association.

The PRESIDING CHAIRMAN: How is it maintained?

Mrs. CAMPBELL: They are maintained differently in different provinces. In Montreal we are part of the Red Feather agency and the major part of our money comes from the Welfare Federation drive. We also get grants from the Federal government through General Gibson and from the remission branch for ticket-of-leave cases. Our function is a dual one: to promote penal reform and to help with the after care of the prisoners. Our own particular office consists of myself and three male social workers who are professionally trained.

The PRESIDING CHAIRMAN: Are there any questions members of the committee would like to ask with respect only to the background of the John Howard Society?

Miss BENNETT: I have one question arising out of the question Mrs. Shipley asked. I think records in the courts themselves across this country are available as to "repeaters" with regard to corporal punishment, and I think we could obtain some idea of what happens where corporal punishment has been instituted, as to the repeaters in the various magistrates' courts. That may be of some help to the committee, outside this society.

The PRESIDING CHAIRMAN: Yes. As you know, we have asked the provincial jurisdictions to give us whatever assistance they could; and the subcommittee has considered that, but we have not had too many provinces come forward to give us information.

Miss BENNETT: Yes. I think it would be helpful if we could have a little more information as constructive work on what can be accomplished by rehabilitation, from the society. I think we can get these figures, to some degree, through the offices of the department. I was interested in one thing. I thought that the professor said that there was a slackening in the extent, or there really is not such a thing as a professional criminal. I might have misunderstood his remarks because I think we have had evidence here to the contrary, that it is becoming more professional. I am interested in what he meant by that.

The WITNESS: What I meant to say was that perhaps there is a greater time element operative than I had suggested. In the 1920's it was not at all uncommon to find very highly organized pickpocketing, shoplifting, and other types of criminal groups. These were gang organizations, but they have largely disappeared in our time. Nowadays most organized crime is linked to gambling and—as far as I know, they try to avoid violence simply because they have become business enterprises. They are interested in not attracting public attention.

The professional criminals that I spoke of were long time pickpockets, shoplifters, and so on, and they have largely disappeared. The experience I have run into in some of the cities in the United States, in talking with policemen there, is that the "gang" crime and violence is coming from inexperienced boys and not the professional type. And I have heard policemen say to me that they regretted the disappearance of the old-time professional criminal because he, at least, was dependable.

Miss BENNETT: Now it is becoming big business?

The WITNESS: Either big business, or young boys. That is my impression.

Miss BENNETT: That is what I wanted to know.

The PRESIDING CHAIRMAN: Now, Mr. Montgomery.

Mr. MONTGOMERY: Mr. Chairman: since your work is chiefly rehabilitation, and I understand you have been working in placing people who come out of prison in employment, would you say that it is more difficult to rehabilitate prisoners who have been flogged in prison than those who have not?

Mrs. CAMPBELL: I would say that if you meet violence with violence, it is always harder to get to them and to get them to have a respect for justice and for society.

I know that we have had men come out who have spent a great part of their time in penitentiaries in the "hole" and we have found that it takes us many months before we are able to work with them. But as already pointed out, you must take into consideration the type of person who is sentenced to the "hole" for a long period. He is usually a person who is disturbed in the first place and probably has a long history of abnormal behaviour perhaps dating

back to his childhood. Therefore you might assume he would necessarily be a more difficult person to rehabilitate. In our experience we have found that the harsher the punishment, the harder it is to socialize somebody which, after all, is the object of our society.

Mr. MONTGOMERY: Your comment on the abolishment of corporal punishment would be based more or less on that?

Mrs. CAMPBELL: Yes.

Mr. MONTGOMERY: Would it not be affected by the type of criminal?

Mrs. CAMPBELL: I do not want to be caught like that. There are prisoners who are very disturbed. I feel that Dr. MacLeod can answer this better than I can. We have met people who have received harsh punishment in our prisons and penitentiaries. We may know something about their early years. We have found that with the man who comes out with a feeling that society is not against him, that the people in authority have understood him in the penitentiaries, that it is easier perhaps for us to help him.

Mr. MONTGOMERY: What about prisoners who come out and who have been flogged? Do they think that they have not been as well treated?

Mrs. CAMPBELL: I think that is a hard question to answer.

Mr. MONTGOMERY: Well let me put it this way.

The PRESIDING CHAIRMAN: Perhaps one of the other witnesses would like to answer your question.

Mrs. CAMPBELL: I think that perhaps Dr. MacLeod might handle this question better than I can.

Dr. MACLEOD: I do not know, sir. The statistics for Canada are at our disposal, and on the rehabilitation side they are very meagre. Therefore I would like to cite what authority I have, if that authority is acceptable. Let me put it this way: I have had experience as a former medical officer in a mental hospital. I have also had experience as a psychiatrist attached to a mental hygiene unit which dealt with children and young adolescents; and I have had the experience of having dealt with one or two persons who have received corporal punishment in prison.

I would try to point out that as far as corporal punishment is concerned it is still doled out to individuals in our society outside of the prisons, that is, in their homes. Some cases are those of disturbed children, coming from disturbed, unsatisfactory home backgrounds. We have plenty of evidence that those children were subjected repeatedly to very severe corporal punishment because of some behaviour which their parents found undesirable. But in no case have we found that severe corporal punishment was helpful. In every case we found that we had to have it stopped before we were able to make any headway at all in our attempts to cure the children.

Yet I do not want to give a false picture. There is as you doubtless know, three ways of getting people to toe the mark: punish them if they do not; reward them if they do; or have an understanding of why they cannot.

In a very large number of normal people the experience of pain will help them to toe the mark without very much damaging effect on their personalities. We are speaking of the normal punishment that is given in the normal home. Our clinical experience is that the children who respond to punishment seldom do the things which require it, while the type of child which does not respond to punishment is usually a psychologically disturbed person, such as the young criminal psychopath. These people have a very high pain threshold.

Take the case of a punishment which is received in his home. Perhaps the child has committed some disobedient act and the father is determined to beat it out of him because he feels that otherwise his child may ultimately become a prison case. Under those conditions I have never had any clinical experience of

a father managing to beat that bad behaviour out of a child; I put this forward, not statistically but as a clinical impression. All I can say is that I have seen quite a number of such cases in which excessive physical punishment made the person much harder to treat.

Mr. MONTGOMERY: And on the same basis you come to the conclusion that this is a type of person who usually gets into prison and therefore corporal punishment does not benefit that person from a reforming standpoint?

Dr. MACLEOD: Yes. There is quite a large group of individuals in our community who, for one reason or another—be it bad home conditions, deprivation, or maybe constitutional or genetic factors—is unable to fit into the social pattern in which they find themselves. Their disturbed behaviour is criticized by the people around them, and it is this group that is particularly difficult to relate to society after punishment has been given to them. As far as we know in our clinical experience, we have not found any case where the father has been able to say to us: “I managed to beat it out of him.”

Most of the cases of this nature that we get in mental hygiene institutions come to us under similar conditions. The parents tell us, “I tried to treat him myself and I tried to beat this out of him; he continues to stay out late at night; he continues to steal; and he continues to take advantage of the weaker children around him.”

Mrs. SHIPLEY: You would not get them if beatings were effective?

Dr. MACLEOD: No. There are a very large number for whom a normal beating at the right time was effective; but that is not the group you find later on in the penitentiaries.

Mr. MONTGOMERY: I think we can admit that corporal punishment does have some good effect.

The WITNESS: I am not prepared to admit or to deny that. If you will look at the evidence you will see that it shows only one thing. In its relationship to life imprisonment, it is impossible to show that capital punishment is more of a deterrent or less of a deterrent. I still think it remains somewhat of an open question as to how much of a deterrent capital punishment actually is.

I do not think that anybody would deny that under certain circumstances this very extreme form of punishment is effective. I would not deny that. But how much effect it has for how many people and under what conditions, we just do not have the information to answer.

The PRESIDING CHAIRMAN: Now, Mrs. Fergusson.

By the Hon. Mrs. Fergusson:

Q. I would like to point out that one of our great difficulties is that some of the witnesses who appear before us give very strong statements on one side while other witnesses appear and give very strong statements on the other side. One such point I have in mind. It is the statement made on page 8 subsection (b) where it says:

Probably because of the reasons given above, juries are notoriously loath to convict a person where the penalty is death.

About a year ago, and about the same time in March, Mr. Common, Director of Public Prosecutions for the Ontario Attorney General's Department appeared before us when I think that question was put to him, as to whether the death penalty is a factor with juries in coming to a decision.

The PRESIDING CHAIRMAN: What page?

Hon. Mrs. FERGUSSON: Page 131.

The PRESIDING CHAIRMAN: Page 131 of the evidence for last year.

Hon. Mrs. FERGUSON: Yes. You will find a reference to it there. I am sorry. There was a first reference when he was asked the question: and when he came back again he said he had thought the matter over; and at page 131 he gave us the benefit of his views and he said:

The question, I believe was "Was there any reluctance on the part of juries in capital cases to convict having regard to the inevitable sentence of death if the accused is found guilty.

And then he goes on to say:

My answer is I can find none.

He does point out that there are perverse verdicts which no one had explained, but he doubted that when the penalty was capital punishment.

Mrs. FAIREY: Would you mind reading on a bit further.

Hon. Mrs. FERGUSON:

That is, if the Crown's case is proven beyond a reasonable doubt—and of course no doubt being established by the defence on any of the defences which are open to him—I do not know of any reluctance on the part of a jury if a case is clear and that inevitably they will convict. Now, there are some cases which I mentioned the other day in which perverse verdicts are sometimes returned by juries for what reason no one particularly knows. I think that is all.

You have made a statement. Have you anything on which to base it?

The WITNESS: Well, one of the great statistical arguments in this situation is: why the difference in the conviction of men and women in these cases? It is fairly well known that far fewer women are convicted in the first place and changed in the second, than men. The idea behind the belief raised is that statistics used in that way will support my statement. The idea behind this argument seems to be that we hate to convict any human being but we hate more to convict women, so that the feelings of the jury shows up in the relative statistics.

Hon. Mrs. FERGUSON: You have the fact that there are less women, because less women are charged with murder or commit murder.

The WITNESS: I think that this is on a percentage basis. I am sorry that I do not have the figures, but as I recall, several different authorities have made statements that women do not get convicted as easily as men.

The CHAIRMAN: That is reflected in the law also. There is a provision in the law that women should not be spanked.

By Hon. Mrs. Fergusson:

Q. I do not mean that I disagree with your statement, but I should like to know on what you base it.—A. I understand that. That was one point. The second is this: the idea that juries are loth to convict is, on the one hand, reflected, partially historically, where we have seen a change in the use of the death penalty, where it had been very widespread at one period of time, its use been increasingly limited with the passage of time. Thus in the past where the death penalty was mandatory for minor crimes it stopped people from being convicted at all. In other words, this was too great a penalty.

Q. I did not catch that.—A. The statement says that when the evidence is unequivocal, so to speak, when there is no doubt in anybody's mind, the jury then has to pass a statement of conviction. The question really arises in the many cases where the evidence is not so clear.

Hon. Mr. FARRIS: A man must be convicted beyond reasonable doubt, you know.

The WITNESS: Yes, and it for this reason that juries do release guilty men, for the doubt increases with the penalty. I should like to ask any public prosecutor—and I have had experience of talking to public prosecutors on the question—why he so carefully arraigns a man on a lesser charge than that which is obviously appropriate to certain crimes. Part of the reason is that the prosecutor does not think that he can convict a man, and he wants to punish him in some way.

Mr. VALOIS: Because they have not enough evidence.

The WITNESS: I would suspect—and I wish I had statistics on this—that if you could have such a thing as equal evidence in cases, having one case where the only punishment is life imprisonment, and another where the only punishment is execution, if I were a jury I would certainly feel that if a man was to be imprisoned for life and there was a slight doubt in my mind, I might be willing, if the evidence were strong, to sentence him. But if there was a tiny doubt in my mind I would not want to send him to his death. I believe that my feelings reflect those of any person on a jury.

By Mr. Leduc (Verdun):

Q. On page 6 of your brief you give the following quotation:

During the 300 days prior to the executions there were 115 days without homicides while during the 300 days after the executions there were 74 such days.

Would it be logical to conclude that a permanent deterrent would exist if there were more executions?—A. From this, no. "Without homicides" means, for example, that, of the 300 days before, there were 115 days in which there were no murders, shall we say. In the period after the execution there were only 74 days. There were less days afterwards in which there were homicides. In other words there were more homicides after the executions than before. So you would assume from this particular statement that if you increase the number of publicized executions the homicide rate would go up. These figures would suggest that an increase in executions would increase the homicide rate. I am not prepared to state that myself; I am only interpreting the figures.

Q. In my opinion, up to date, the judge presiding at the trial in a case of murder should have the alternative of condemning the accused, if found guilty, to death or condemning him to life imprisonment. Do you think that such a compromise would serve society as well?—A. Why should you make the judge decide? I am answering the question with that kind of feeling. It seems to me that the decision before the law is either that we are not going to use this form of punishment or that we are. Say that two men are convicted of murder. The judge has to make up his mind whether he picks one man to be executed or allows another to live. It seems to me it places an undue strain on a personal estimate. There would be no real guidance in the law. It says, "You are the judge. Why have you had one man executed and another man not executed?" My feeling is basically against that. I think it is better to have it clearly written into the law as to how the judge should act on the case, if possible.

Q. Even if in certain cases the evidence is weak?—A. If you mean that the only choice is that between the existing law and making the sentence not mandatory, I would say that a non-mandatory sentence would be a step in the right direction. To my mind it is not as satisfactory as a clear statement in the law as to how the judge should act.

Mr. MONTGOMERY: Would you consider that the jury might make that decision?

The WITNESS: I am not familiar enough with the law to answer on this point. This is the sort of question which I am not competent to answer.

Mr. MONTGOMERY: I should not be interrupting.

Hon. Mr. FARRIS: It is related of the late Judge Rouleau of Calgary that he said, "I give you six months; if I were sure you were guilty, I would give you two years."

Mrs. CAMPBELL: There is so much difference between the sentences that are handed out.

By Hon. Mrs. Hodges:

Q. Do you not think that much depends on the difference in the evidence and in the persons? A murder trial usually lasts a fairly long time, and I suppose that a judge has knowledge of certain factors which are applying. You cannot put those into statistics. There are so many other factors contributing. The judge usually takes those into consideration, do you not think?—A. I would imagine that it does. I am certainly in favour of a compromise between making it non-mandatory and having the decision made by the judge.

Q. I would hate to get into the position where no judge exercised clemency or wanted to be fair. There are many cases where clemency is recommended.—A. If you are dealing with national law, you recognize that the responsibility is a national responsibility. You try to equalize justice in every part of the country; crime may look different out in a frontier area or in the slums of a city, and judges from these various areas have different outlooks. A crime may seem much more heinous—even murder—in one community than another. The law should try to statutize judgments irregardless of local sentiments.

Q. It is always heinous to the victim, wherever you live.—A. To the victims's relatives.

Q. And to the victim. We must not lose sight of the fact that there is another side to it.—A. My point is: how do you ensure regularity of justice?

Hon. Mrs. HODGES: I do not suppose that you could ever ensure it in any law.

Mr. LEDUC (*Verdun*): I have only one more question. In the middle of page 11 of your brief, you give the following quotation:

The subjection of criminals to more than one whipping was not effective in changing their criminal habits.

Does that mean that only one whipping would be effective?

The WITNESS: No, it merely adds to the preceding paragraph. Some people might suggest, after reading the first paragraph, that if you give them enough whipping it will work. So the author of this has said, "Let us look at the people who have been whipped more than once. Does that make it effective?" Then he gives statistics pointing out that it does not.

Mr. WINCH: I have two or three questions I should like to ask the witnesses. The answers may appear obvious, but I should like to have them for the record. As the John Howard Society is an organization interested in the rehabilitation of criminals, the members and employees of the organization must have a keen insight into the personalities, emotions and outlooks of those with whom they are dealing. Now, that being axiomatic, I take it, what in your estimation would be the sense or the logic of inflicting corporal punishment again on those who have had it previously, because of an infringement of prison rules? I have in mind that in the past few days I have been investigating two cases of men who have had corporal punishment. Both men are under 40. One man has had the paddle 100 times, and the other man has had the paddle 185 times. I know that, because I have seen and I have checked their prison files. Now, from your knowledge of human nature and your studies

of the minds, personalities and emotions of those who break the law, can you see any sense or logic in again giving corporal punishment to individuals of that type if they again break the prison discipline?

Mrs. CAMPBELL: Are you asking me?

Dr. MacLEOD: I think that my previous answer covers your point. I would suggest that anybody who has committed an infringement of prison regulations and is now up for corporal punishment should be given an examination, not only by the prison physician, but by the prison psychiatrist or by some psychiatrist appointed by the state authorities or legal authorities. I think that in nearly every case the psychiatrist would give as his opinion that corporal punishment in this case would not in any way deter the individual from committing the crime again. I am speaking now from my own clinical experience only, from the number of criminals or persons I have seen in prison or outside of prison, or the same type of individual who gives trouble as a patient in mental hospital—and I believe the kind of individual who commits infringement of prison regulations is usually the type of individual who is not affected by corporal punishment and I think every case you would care to investigate would bear me out.

Mr. WINCH: Then, I have a follow-up question on the same two cases. Both those men are still in the penitentiary and in addition to their past history of the paddle both men have been in solitary or in the "hole", as you call it, for a period of nine months and they are still in there. Would you, from your experience, think there is any chance whatsoever of your organization or any individual organization being able to rehabilitate them into useful members of society?

Dr. MacLEOD: Perhaps I could speak to this point by referring to other developments which have taken place, in the treatment and care of the mental patient. Most of the reforms have resulted in a greater freedom from solitary confinement and the straight jacket. Admittedly modern drugs have made this more easy than it was, but I remember the time when these drugs were not available and I had the opportunity of comparing the behaviour of mentally ill patients where restrictive measures were severe and mentally ill patients in institutions where restrictive measures were not severe. There was no comparison at all in terms of the ease with which the mentally ill patients in the institutions where restrictions were less severe could be made more socially useful. If solitary confinement were forbidden from this day on and corporal punishment was forbidden from this day on I have no hesitation in saying that I do not feel from my experience you would find any worsening of behaviour on the part of the individual prisoners and my clinical opinion is that you would be surprised at the betterment which would occur.

Mr. WINCH: I have one more question which I imagine would be classified as a clinical or scientific question. If you had under the present regulations the power of imposition of corporal punishment or of solitary confinement for infringement of penitentiary regulations in which instance do you think that the task of rehabilitation is the tougher, in the case of the one who has the corporal punishment and the physical punishment and his emotional reaction to it, or the mental reaction of the one who is strictly in solitary confinement over a period of many months; which one do you think is actually the more damaging to the rehabilitative process of those individuals?

Dr. MacLEOD: I think there is no doubt that the deleterious effect of isolation is even more severe than capital punishment.

Mr. BROWN (*Brantford*): Mr. Chairman, I would like to congratulate the John Howard Society on its brief. There are a couple of questions I would

like to ask with respect to one or two of the arguments which were advanced in support of the brief. I believe Dr. MacLeod put forward a rather interesting observation. As I recall it, in the case where the death penalty were abolished for murder, he put forth the suggestion in connection with protecting the police that in order to prevent injury to the police that the death penalty be mandatory only if the offender in his efforts to escape or elude the police resorted to violence; that in such an instance the death penalty would be mandatory. I wonder if it could not be argued from that that he believes that the death penalty is a deterrent because you have here a situation where, to prevent one murder we have the death penalty which is not mandatory but to prevent the possibility of two murders the death penalty is mandatory. This could be argued from that that the death penalty is a deterrent to the crime.

Dr. McLEOD: I should like to say that the behaviour of a human being is determined to a great extent by his emotional state at the time. If a person's emotional state is disturbed, and you have an excited, panic state in the individual, or a state of extreme hostility, we know under these conditions that reason is in abeyance and the individual will commit acts which he would not commit in the more calm and reasoned state of mind. We also know that these disturbed states to which I refer, sometimes occurring in aggressive psychopaths, are self-limiting in nature, that is may be episodic and very often the committing of the aggressive act is enough to bring the person back to his senses. Now, I would suggest that the knowledge that the person might meet death plays no part in inhibiting him during the time his emotions are aroused, when he is cornered or in an enraged condition; but shortly after the shooting or killing, the person is in a different state of mind and in that state of mind he would act as we would act as normal human beings. If you knew there were two lines of action open, one which would involve a certainty of not losing your life and the other where you ran a very high risk of losing your life, I put it forward for consideration that what I have proposed might be one way of handling this problem because I think it is common experience that if you study the convicted prisoners, you will find that they are quite good prisoners and in many cases seem to function as reasonable human beings. I am going to suggest the same argument I put forward with corporal punishment. The child who is affected by it only needed it once or twice and never needed to get it again. They do not commit the type of misbehaviour which calls for corporal punishment. The type of child who is unaffected by corporal punishment is the child who repeatedly commits the behaviour which calls for it; the same with capital punishment. I think it deters people who do not need it to deter them, and does not deter the type of individual who has not inner psychological deterrents at his disposal. I think that psychological disturbance is not a constant but a fluctuating state and I would suggest that many murders are committed by individuals in a temporary state of disordered reason and of disordered functioning and I think that when the disordered functioning settles, these individuals would then be deterred by the knowledge that if they did not give themselves up immediately they ran the risk of being convicted of murder and executed. That is the argument I was putting forward. I think the crux of the matter is that human beings do not function persistently at one level. They might be disturbed and episodically disturbed. The effect of the death penalty in one case as a deterrent would be very different from another case.

Mr. BROWN (*Brantford*): But in some cases, it would be a deterrent?

Dr. MACLEOD: Yes, but I am suggesting that, in the type of individual that it would be a deterrent, there are other psychological deterrents in that human being that would be more effective.

Mr. BROWN (*Brantford*): In the brief there is a further argument in connection with the protection of police, on page 7, where it is suggested in paragraph 3 that if a provision in the Criminal Code were made for an increased penalty for carrying firearms it might deter individuals from carrying firearms. Well, could not the same argument be used in respect to capital punishment, that an increased penalty or the supreme penalty of the death sentence would likewise deter; being an increased penalty beyond and above life imprisonment it would likewise deter the committing of murder.

The WITNESS: I would like to suggest that this argument, the protective value of capital punishment for police, is put forth in terms of what I have experienced to be a general argument concerning the deterrent value of capital punishment. Now, it seems to me that the major argument runs on the idea that capital punishment deters professional criminals—as I remember the argument in the British Royal Commission—from carrying firearms or from association with people who do carry firearms. I would like to advance a suggestion here that the problem in my mind is to stop them from carrying the firearms and that the threat of capital punishment does not do that directly. In other words, if you want an easily perceived and very direct problem which cuts out that measure at that point it seems to me—I am not advancing this as a clear statement but just that the matter should be looked into—but it seems to me that, if the purpose of the penalty is to keep criminals from carrying firearms, then one should make the penalties very severe for carrying firearms.

By Mr. Cameron (High Park):

Q. I have been wanting to ask two questions. I should like to ask, having regard to the fact corporal punishment is a type of punishment restricted to certain particular crimes, and also having regard to the fact that we here have nothing at all to do with prison punishment but the punishment which is going to be administered under the Criminal Code, do you not think, members of the panel, that there are cases in which corporal punishment with a moderate sentence so far as time is concerned would be a more appropriate arrangement than, shall we say, a longer term of imprisonment without corporal punishment? Let us use the analogy of a child who gets a sharp punishment and then knows that it is "all over"; it does him more good than if you gave the child a longer punishment by taking his pleasure away from him and showing for an undue length of time that you still regard him with disapproval.—A. You are suggesting that corporal punishment be considered in lieu of imprisonment?

Q. In some particular cases. I point out that it is restricted by the Criminal Code to certain types of offence, for one thing, offences of violence against the person. I am just asking your opinion—whether you do not think that is something worth while retaining in the Criminal Code, instead of abolishing it, in appropriate circumstances. A judge, when he comes to pass sentence, will have before him a prisoner's record and if that record shows that corporal punishment has been applied before and has not been effective, a wise judge will not apply it the second time.—A. I will only say in this connection that if I recollect correctly in Maryland state they did ask what sorts of people—not only in terms of crime alone—were given these sentences which involve corporal punishment and they noted that as you went down in the socio-economic scale of society that the numbers increased. People from middle-class families were never assigned corporal punishment, but as you got down into the lower socio-economic brackets there seemed to be a higher correlation. In my opinion it is exactly the wrong procedure, because that type of person—the type of person who comes from these slum gangs—will go back and boast about it.

Q. I am not in favour of discriminate corporal punishment. I am trying to get this confined to the restrictive field of a certain type of crime and to ask you whether you have any opinion on whether or not it would be better to retain corporal punishment with a moderate sentence or to give a person no corporal punishment, but a longer term in prison?—A. I would have to “hedge” on that until I know what is happening to the man while he is in prison.

Q. How does that enter into the situation at all?—A. From what I know of a great number of reform schools, I think that sentencing a person to them is one of the worst things you could do to prevent a person following a life of crime. Corporal punishment in those circumstances is less likely to incite him to a life of crime. However, I would not try to suggest which is more effective as a deterrent.

Q. I shall refer again to my analogy of the small child. A person has been convicted. The law enables a judge, if he deems it appropriate, to sentence him to corporal punishment. Do you know if there are some cases where that is a more appropriate and effective punishment than a longer prison sentence? The Minister of Justice when he was here, told us that in cases where there was a long sentence of imprisonment imposed, no corporal punishment had been ordered, but it seems to me that short sentences and corporal punishment is a more appropriate arrangement. I am asking you if that can still be the case in certain individual types of crime.

Dr. MACLEOD: I think there is a danger in trying to draw too close an analogy between a child and an adult. The case is different in regard to a child which although it may be punished, is still in relationship with the family, and is still accepted by it; or in a school where corporal punishment is not regarded as disgracing whoever receives it. In such circumstances a schoolboy offered the choice between doing an imposition and receiving corporal punishment may quite often accept corporal punishment in lieu of the more boring form of penalty.

When you come, however, to society—I must speak here as a physician and you must remember that a physician is biased as he is concerned with rehabilitation or with the care of a human being. It is not his province to consider justice; it is his province to deal with an individual who is ill, whether his illness arises from a physical cause or from anything else—I do say that in our prison conditions today the infliction of corporal punishment so degrades an individual that it makes it very difficult for him to fit into society again, and I certainly know it makes it very difficult for those who are concerned with his rehabilitation to help him later on.

Mr. CAMERON (*High Park*): That is why we are having difficulty in understanding each other—because I am looking at the justice of the sentence and you are thinking of the effect it is going to have on a man with regard to his rehabilitation. I suppose the same thing applies to capital punishment. We had a witness here from Saskatchewan and I tried to make that point with him. Senator Farris has now referred to it again—what about justice? We have got our criminal convicted. We know he has not been deterred from crime, let us say murder. We know that if we execute him it is probably not going to deter anyone else from committing a crime. He has been convicted. What emotion which could be raised in his favour by learned counsel has been exhausted, and now he stands, stark and naked before the public as a convicted murderer. Is it justice that we should hang or execute him by any means, or should we sentence him to life imprisonment? Based on these facts, is it a justice?

Dr. MACLEOD: I still contend that I am not competent to answer that question. I am a physician.

By Mr. Cameron (High Park):

Q. That is the "A" in your brief. Your "B" is because it does not deter, because there are possibilities of a miscarriage of justice, either by a person being hanged who is not guilty of murder, or excuses on the ground of the sentiment of the jury. I just want to get your opinion with regard to a person who has absolutely committed murder, when the sentence to death, by whatever means, is a just sentence. Is it too severe a penalty?—A. I can only repeat that I do not think it is our function to talk on those points. We feel we should say something to you which is more reliable than our opinions as private citizens.

Q. I would like to have your opinions as a private person.

The PRESIDING CHAIRMAN: I understand what Mr. Cameron wants to know is what each one of you feels privately—as one might stop someone on the street and ask him for his views on a particular question.

Mr. BLAIR: If I may interject, there are various theories of punishment which are known to experts in that field, and perhaps the witness could help Mr. Cameron by indicating which theories of punishment now prevail.

The WITNESS: Most of the theories of punishment revolve around certain ideas of what you want to happen. If you are interested in lowering the incidents of crime in society rather than revenging yourselves—

Mr. CAMERON (*High Park*): I do not like that word "revenge"—it is not a proper one to use.

The WITNESS: I am perfectly willing to withdraw the word. When you talk about theories of punishment, most of them refer, I imagine, to prevention or rehabilitation.

To a question on that level we suggest that, in so far as we can get evidence together, the suggestion is that capital punishment does not show up as having a more deterrent value than life imprisonment.

There is one small point in the brief with regard to justice—indirectly—and that is the possible miscarriage of justice.

By Mr. Cameron (High Park):

Q. I tried to make it clear that in the particular question I was addressing myself to, there had been no miscarriage of justice. This man had been properly convicted.—A. If he were later found to be insane—

Q. I want an opinion on a hypothetical case. I do not want it clouded by the idea that there might have been a miscarriage of justice in some way, either beforehand or afterwards, or that some jury might fail to have taken into account what it should have done on account of sentimental grounds.—A. I would prefer not to answer the question.

Mr. BOISVERT: Mr. Westley, would you give me your definition of "deterrent"? We hear so much about the word that I should like to hear your definition of it.

The WITNESS: A deterrent is a measure which prevents an individual from carrying out an act, in the case of capital punishment I refer to its effectiveness as a measure which prevents people in the population of a country from committing murder.

Mr. BOISVERT: We agree on your definition. Now is it possible to compile statistics which might say that there is no deterrence in the minds of anyone in a community or in a society as a whole.—A. This argument has been raised before. It seems to me you can make an assumption that if you take the large mass of the people in a community, particularly when you run this group into millions, at that point statistical figures on the number of crimes do reflect to some extent the deterrent effect of the measures.

In the instance of capital punishment, what we find is: whether or not it is used, these large figures on the percentage of homicide do not seem to change.

Q. Turning now to your statistical table on page 3 on which you base your argument. Are there any statistics which I see on pages 3 and 4 on which or from which we could find out the number of those who committed murder and who were not arrested and committed to trial during that period of time.—A. You can say nothing about the murderers. These are homicide death rates.

Q. Your statistics are based on convictions?

The PRESIDING CHAIRMAN: Would not the other statistics you refer to be in the possession of the provincial authorities?

Mr. BOISVERT: I do not know. I would like to know if we can take them into consideration and call for statistics of those who committed murder during the period of time and who were not arrested, then the number of those who might have committed suicide after having committed murder; and then those who have killed each other, according to the law of the jungle, as in the world of gangsters. So if we had all the statistics, do you not think that the statistics upon which you are basing your argument could be of no value at all?—A. No, I do not, and for this reason: I agree with you that statistics of this kind are always incomplete, but I would like to make one observation: that these figures are drawn from Professor Sellin's figures, and that you have, in your proceedings, more ample discussion on the basis of the various statistics.

But the statistics stated here are, I believe, the most useful, because the states being compared are adjoining, and have the same economic and cultural patterns. The reason why I think that, if you added the other type of statistics to these statistics, the picture would not change is because this pattern here also holds for many other areas of the world.

The other areas are not worth citing because they are not good comparisons. Nevertheless, where you find abolition of capital punishment, the statistics tell the same story although the data on which they are based is probably not the same.

Q. Don't you think it is hard to base a judgment on such statistics, when, as you have said, those statistics are based not on the number of murders committed within a period, but on the number of convictions during that period?—A. Why assume, as you are assuming in this instance, that in Maine, which is an abolition state, the basis of gathering statistics is going to be any worse than in the other two states? If you improve statistics, would you not have a similar improvement in abolition and in non-abolition states? Is that not a logical assumption? In lieu of some reason for stating that this form of gathering statistics is biased in favor of abolition, I do not see the relevance of the point you are making.

Q. I have one more question, Mr. Chairman. I am sorry. In your brief you brought up the point that there could be a miscarriage of justice. But is it not possible also that a great many guilty people escape through the same process of law?

Mr. BLAIR: I think the brief mentions that.

The WITNESS: I am not clear about the question, but I feel that I have already said that in the brief. I will agree with you that that is one of the points about miscarriage of justice.

The PRESIDING CHAIRMAN: Are there any more questions?

By Mr. Blair:

Q. Just to clarify my understanding of table 1: This table refers to the deaths reported as homicides and not to convictions?—A. That is my understanding but it can be checked against Professor Sellin's figures.

Q. I would like to ask you a further question. Did I understand you correctly to say that you felt, in view of the present conditions in prisons, it was preferable to retain or extend the area of corporal punishment as an alternative to a prison sentence?—A. No. I was trying to suggest that if you talk of what are in many instances bad prison situations—I am not saying that all prisons in Canada or anywhere else are bad; but only that there are many of them where conditions are not very desirable—that from the case records I have seen in my study of juvenile delinquency, it seems to me that prison is one of the contributing factors to a life of crime. I think that flogging is a lesser experience than being confined to prison. So I was not answering the question in the light of its desirability as a deterrent. This I cannot do, but I would suggest that it is the lesser of two evils as an encouragement to a life of crime. If you were to turn the question around and say, “Which one of the two—imprisonment or flogging—encourages a man most?” I should be inclined to say that imprisonment would, from my own reading of the matter.

Mr. BLAIR: Do any other members of the panel wish to comment on that?

Mrs. CAMPBELL: I should like to put it this way. General Gibson, as Commissioner of Penitentiaries, and many people who are in the penal field realize the limitations and are working toward better conditions. We shall look forward to the day when the prisons will be staffed by professional people who have an understanding of abnormal behaviour. Therefore we hope that when it is necessary to incarcerate somebody, the period of incarceration will help them to become more socialized. True reform can only be developed slowly, and there are only a limited number of professional people with the necessary experience. I personally would hate to say that we advocate flogging until such time as we have the types of prisons that we in the penal field are looking forward to having in Canada. That is the only thing I would like to add.

The WITNESS: May I say that I also would agree, to the extent that the prison experience is a real rehabilitation experience, that this would reverse the situation completely in my mind.

The CHAIRMAN: If there are no further questions, I would like to thank Mrs. Campbell, Professor Westley, and Dr. MacLeod for their attendance here today. You have been very helpful, and I am sure that we have profited greatly by your evidence.

